(31) (30)

Nos. 88-1125 and 88-1309

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JANE HODGSON, M.D., *et al.*, *Petitioners*,

—v.—

THE STATE OF MINNESOTA, *et al.*, *Respondents.*

THE STATE OF MINNESOTA, *et al.*, *Cross-Petitioners*,

—v.—

JANE HODGSON, M.D., *et al.*, *Cross-Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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I. THE DISTRICT COURT'S FACTUAL INQUIRY WAS CONSTITUTIONALLY MANDATED AND ITS FINDINGS WERE SUPPORTED BY THE EVIDENCE.

A. Contrary To The Assertions Of Both Defendants And The Solicitor General, It Was Proper For The Trial Court To Make Factual Determinations.

In an effort to deflect the attention of this Court from the district court's factual findings, defendants argue that the "validity" of laws like Minnesota's is not "dependent in any way upon state-by-state factual proof" that the state's interests have been served. Brief of Respondents in No. 88-1125 at 31-32.[1] The Solicitor General, on behalf of *amicus* tne United States, goes further, arguing that any time state legislation is grounded on assumptions which are "subjective, value-laden, and contestable . . . it is almost meaningless to inquire as to their truth or falsity." S.G. 26.[2] In so arguing, both defendants and the Solicitor ignore settled principles of law.

Factfinding is vital to the function of the lower federal courts, for a full factual record is essential to the adjudication of constitutional claims. *See, e.g., City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706, 721-22 (1989); *Bowen v. Kendrick*, 108 S. Ct. 2562, 2582 (1988) (O'Connor, J., concurring); *see also* B.P. 30 n.60. Even when applying the most deferential standards of review, this Court has held that a district court must base its decisions on findings of actual fact. *See, e.g., Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 444 n.19 (1978) ("presumption of validity . . . cannot justify a court in closing its eyes to uncontroverted evidence of rec-

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1 In conformity with the citation format used in plaintiffs' prior briefs, citations to Brief for Cross-Respondents in No. 88-1309 are in the form "B.C-R." Citations to defendants' Brief of Respondents are in the form "B.R." Citations to Briefs of *amici* United States and AAPS are in the forms "S.G." and "AAPS" respectively.

2 The Solicitor goes on to argue that such a factual inquiry "is ultimately an assault on the right of the people . . . to govern themselves." S.G. 26-27.

ord."); *Kassel v. Consolidated Freightways*, 450 U.S. 662, 675-76 (1981) (court cannot ignore evidence regarding the safety of double trailers and defer to the state).[3] *See generally* B.P. 29-31.

These factfinding functions do not change simply because legislative assumptions have been "subjective, value-laden, [or] contestable." S.G. 26.[4] In this case, for example, the legislative judgment at issue is that Minnesota's interest in protecting immature minors will be served by a two-parent notice requirement.[5] Although this judgment may have been "contestable" at the time of enactment, it is not today. The argument that the

3 Such factual determinations are consistent with the proper role of a district court and required to ascertain, for example, whether the state's asserted interests were served by the statute. *Cf. Carey v. Population Servs. Int'l*, 431 U.S. 678, 703 (1977) (White, J., concurring) (concurring principally because the State did not prove that the statute "measurably contributes to the deterrent purposes which the State advances as justification for the restriction.").

4 If this were not true, legislative value judgments such as those about racial or gender inequality would also be unassailable in the courts. Indeed, in *Brown v. Bd. of Education*, 347 U.S. 483 (1954), the state argued that the district court's finding of fact regarding the effect of racial segregation on black children, *see id.* at 483 n.1, was " 'legally insignificant' and immaterial," Henderson, *Legality and Empathy*, 85 Mich. L. Rev. 1574, 1595-96 (1987) (quoting from Kamisar, *The School Desegregation Cases in Retrospect* in Argument 33 (L. Friedman ed. 1969)), because it " 'deals entirely with legislative policy, and does not tread on constitutional right.' " Kluger, *Simple Justice* 572 (1975) (quoting from Transcript of Argument). The Solicitor makes a similar argument today. The argument in *Brown* failed because this Court recognized then, as it has since, that "fixed notions concerning the roles and abilities of [blacks and whites as well as] males and females," *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982), cannot shield a statute from an assessment of the factual record as to the legitimacy of a state's chosen means and objectives. *See generally id.* at 727-31. Accepting the reasoning advanced by defendants and the Solicitor would turn back the clock on a century of legal realism and would leave irrational or even reprehensible legislative value judgments unchallengeable and unreviewed, regardless of "their truth or falsity."

5 Both defendants and the Solicitor imply that plaintiffs seek to impugn legislative value judgments such as those articulated by this Court in *Bellotti v. Baird*, 443 U.S. 622 (1979) (*Bellotti II*). Plaintiffs do not challenge general values, such as the advisability of good parent-child communication on matters of importance; instead, they challenge whether those values have been served by the statute at issue.

district court erred in inquiring into this fact disregards the undisputed duty of federal courts to perform a "searching analysis" of the relationship between legislative means and ends, *Hogan*, 458 U.S. at 728, as well as to determine the actual impact of a law in operation.[6] *See generally* B.P. 29-31.

The Solicitor seeks to discredit the district court's findings by arguing that "constitutional law does not rest on . . . opinions of experts" who "merely camouflage[ ] personal value judgments as impartial truths." S.G. 27. But this attack on the admissibility or reliability of expert testimony is misplaced. This Court has consistently relied on the opinions and research of experts in reaching conclusions of law.[7] Moreover, the dis-

6 Indeed, the Solicitor's argument that the district court erred in considering this evidence, S.G. 26-27, is worthy of Lewis Carroll:

> " 'Herald, read the accusation!' said the King.
>
> On this the White Rabbit blew three blasts on the trumpet and he unrolled the parchment-scroll, and read as follows:—
>
> 'The Queen of Hearts, she made some tarts,
> All on a summer day
> The Knave of Hearts, he stole those tarts
> And took them quite away!'
>
> 'Consider your verdict,' the King said to the jury.
>
> 'Not yet, not yet!' the White Rabbit hastily interrupted. 'There's a great deal to come before that!' "

Carroll, Lewis, *Alice in Wonderland* 97 (Brimax Books Ltd. 1988).

7 Expert testimony is admissible "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue." Fed. R. Evid. § 702. A district court may consider expert testimony even in constitutional cases. Experts may not only give opinions regarding a matter within their expertise, *Rhodes v. Chapman*, 452 U.S. 337, 348 n.13 (1981) (expert opinions "may be helpful and relevant with respect to some questions") (citing *Bell v. Wolfish*, 441 U.S. 520, 543-44 n.27 (1979)), but may also introduce studies and statistics that the court may use in reaching a decision. *See, e.g., United States v. Leon*, 468 U.S. 897, 907 n.6 (1984) (research on the effects of the exclusionary rule); *Craig v. Boren*, 429 U.S. 190, 199-204 (1976) (statistical evidence undermined, rather than supported, State's contention that liquor statute with gender-based age differential served interest in highway safety); *Brown*, 347 U.S. at 494 n.11 (noting studies concerning the psychological effect of racial segregation upon

trict court did not rely primarily on the opinions of experts without personal knowledge. Instead, the court heard and incorporated the evidence provided by a plethora of witnesses who were directly affected by the statute—minors, parents, clinic personnel, state court judges, and court officers. *See* B.P. 29 n.58. Although some of these witnesses were "experts" by training and experience, their testimony was not of the sort which this Court has, on occasion, called into question.[8]

Finally, defendants attempt to annul the district court's findings of fact by arguing that this Court's prior facial cases preclude anything but the most limited judicial review of a parental notice or consent law which has been, in their view, immunized from review by the addition of a facially adequate judicial bypass option. This argument supposes that plaintiffs seek to go beyond the holdings of these cases. To the contrary, however, plaintiffs only ask this Court to apply the holdings in *Bellotti II*, *H.L. v. Matheson*, 450 U.S. 398 (1981), and *Planned Parenthood Ass'n of Kansas City v. Ashcroft*, 462 U.S. 476 (1983),[9] to the facts of this case. B.P. 29-38.

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which this Court relied); *Muller v. Oregon*, 208 U.S. 412, 419 n.† (1908) (noting the reports of experts such as statisticians, commissioners, inspectors, etc.).

8 *See, e.g., Stanford v. Kentucky*, 109 S. Ct. 2969, 2979 (1989). In *Stanford* this Court found that socioscientific evidence regarding the general psychological and developmental characteristics of adolescents was not material to an Eighth Amendment analysis, which requires the Court only to "*identify* the 'evolving standards of decency;' to determine not what they *should* be, but what they *are*." *Id.* (emphasis in original). Where, as here, a court assesses the constitutionality of a law in operation, witnesses with personal knowledge of the impact of the statute may appropriately be relied upon by a district court. While experts on matters such as family violence (*e.g.*, Dr. Lenore Walker) did testify, such testimony was supplementary in nature and served to "assist the trier of fact to understand the evidence" as to the overall impact of Minnesota's law. *See* Fed. R. Evid. § 702.

9 Defendants' suggestion that plaintiffs are seeking the overturn of *Bellotti II* is particularly puzzling in light of defendants' argument that a requirement of notification to both biological parents *without any bypass* is constitutional, despite the requirement established by the plurality in *Bellotti II* that a parental involvement statute "must" allow mature minors and best interests minors to avoid parental involvement, including *notification* to parents that bypass is sought. *See City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 427 n.10 (1983).

In sum, at least since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), the federal judiciary has acknowledged its role in reviewing legislation to protect the constitutional rights of the minority. *See generally West Virginia Bd. of Education v. Barnette*, 319 U.S. 624, 638 (1943). Where a majority favors a particular means of achieving a legislative objective that proves to be unconstitutional in practice, this Court may not evade its duty to uphold the Constitution even as against majority will. *See generally*, *Texas v. Johnson*, 109 S. Ct. 2533, 2548 (1989) (Kennedy, J., concurring) ("[J]udicial power is often difficult in its exercise. We cannot here ask another branch to share responsibility . . . [f]or we are presented with a clear and simple statute to be judged against a clear command of the Constitution. The outcome can be laid at no door but ours.").

B. Defendants' Assessment Of The Evidence Contradicts The District Court's Findings Of Fact, Which Are Supported By The Factual Record And Are Not Clearly Erroneous.

Page for page, line for line, defendants' brief rejects the district court's basic factual finding that the Minnesota statute's two-parent notification requirement, even with a bypass, Minn. Stat. § 144.343(6) ("subdivision 6"), failed to "further[ ] in any meaningful way" any of the purposes which *Bellotti II* found to be significant.[10] 29a. Indeed, the trial court found that

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10 Defendants seek to escape the overwhelming weight of evidence in support of this finding by selectively referring to isolated portions of the over 2600 pages of trial testimony and over 120 exhibits. But the conclusions they seek to draw from this minutia conflict with the finding of the district court. As this Court recently stated:

> If the district court's account of the evidence is plausible in light of the record *viewed in its entirety*, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

Anderson v. Bessemer City, 470 U.S. 564, 573-74 (1985) (citations omitted) (emphasis added); *see also Amadeo v. Zant*, 108 S. Ct. 1771, 1777-78 (1988). Where, as in this case, the trial court's findings of fact were based heavily on weighing the credibility of witness testimony, *see* 29a, 40a-41a, "Rule 52(a)

those interests—protecting the minor and fostering family communication—were actually *undermined* by subdivision 6.[11] 29a. An argument that relies on a factual version entirely incongruent with that of the trial court cannot succeed. We call attention below to the most egregious misstatements of fact made by defendants in their responding brief with reference to: (1) increased delay; (2) increased teenage motherhood; and (3) increased parental involvement.

1. Defendants properly recognize "that all other things being equal, it is medically preferable to have an abortion at an earlier gestational age than at a later gestational age." B.R. 16. In particular, as the district court found, "[s]econd trimester procedures entail significantly greater costs, inconvenience, and risk." 23a. But, as the statistics regarding second trimester abortions given in the Brief of *amicus* AAPS in support of defendants demonstrate, during each year in which the statute was in operation, minors, when compared to adult women, suffered an increased risk of second trimester abortion.[12] Thus,

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demands even greater deference to the trial court's findings." *Anderson*, 470 U.S. at 575.

Moreover, contrary to the Solicitor's argument that the district court's finding is one of fact and law subject to *de novo* review, S.G. 25 n.14, "Rule 52(a) 'does not make exceptions or purport to exclude certain categories of factual findings from the obligation of a court of appeals to accept a district court's findings unless clearly erroneous.' " *Anderson*, 470 U.S. at 574 (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982)). That the district court applied established legal standards to the evidence "does not alter the standard of review." *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986).

11 Defendants did not challenge the factual findings of the district court in the Court of Appeals below. 92a ("The state in response does not attack the findings of the district court . . ."). Nor did the Court of Appeals find any of the district court's factual findings to be clearly erroneous; rather, the Court of Appeals found itself foreclosed from *considering* the legal consequences of the district court's factual findings. 92a ("We are satisfied that the issue here then is not the district court's factual findings . . ."); *see also* 85a.

12 During the years in which subdivision 6 was in effect, minors were 100% more likely to have a second trimester abortion than adults, which is greater than in any of the years prior to the implementation of the statute,

when the statistics provided by the AAPS Brief are analyzed correctly (as in Exhibit B), defendants' threefold contention that minors suffered no medical harm from the statute, B.R. 17-18, that the statute involved no medically significant delays, B.R. 16-17, and, in particular, that the bypass procedure did not contribute to an increase in second trimester abortions, B.R. 18-21, collapses.

2. When government acts "to deter a woman from making a[n abortion] decision," *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 759 (1986), it has, in effect, compelled women to carry their pregnancies to term.[13] During the period for which subdivision 6 was in effect, the *only* age group for which the percentage of pregnancies ending in abortion decreased was the 10-17 year old group. *See* Exhibit A *infra* at A-1-3. For every other group of women for which statistics were collected, the percentage of pregnancies ending in abortion either remained steady or increased during

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and greater than the year (1987) since the statute was enjoined for which statistics are available. *See* Exhibit B *infra* at A-4-5. *Amicus* AAPS ignores this most basic implication of the data they present to this Court, making much of the fact that fluctuations in second trimester abortion rates for minors (10-17 years of age) and adult women occurred in tandem. AAPS 22-23. But this fact is not particularly significant, since small year-to-year fluctuations in second trimester abortion rates are attributable to random changes in physicians' assessments of gestational age.

13 Government-compelled childbirth is precisely the invasion of rights that lay at the core of this Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973):

> The detriment that the State would impose upon the pregnant woman by denying this choice [to obtain an abortion] is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it.

Id. at 153. Many of the concerns voiced by the Court in *Roe* are heightened in the case of minors facing unwanted motherhood. *Bellotti II*, 443 U.S. at 642.

the same time period.[14] Taken together with the disproportionate increase in birth rate for Minneapolis teenagers, *see* B.P. 12 (discussing trial testimony of Dr. Ehlinger and P. Ex. 116),[15] and the district court's explicit finding that "[s]ome mature minors and some minors in whose best interests it is to proceed without notifying their parents are so daunted by the judicial proceeding that they . . . carry to term," 20a, the reduction in percentage of pregnancies ending in abortion strongly supports plaintiffs' assertion that subdivision 6 achieved only the illegitimate objective of deterring abortion, *see* 25a, B.P. 35 n.68., and therefore forced teenagers to carry to term against their will.

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14 The AAPS Brief provides statistics for four age cohorts: 10-17; 18-19; 20-24; and 25-54 years old. A comparison of 1980 (the year before the statute went into effect) and 1985 (the last full year when the statute was in effect) reveals that for minors the percentage of pregnancies ending in abortion declined from 53.9% to 50.3%. The decline continued in 1986 (the statute was in effect until November 6, 1986), but ended in 1987, the first full year after the statute was enjoined. *See* Exhibit A *infra* at A-1.

15 *Amicus* AAPS impugns the significance of this fact with two arguments: First, they argue that the influx of Asian-Pacifics accounts for the dramatic increase in birth rate for teenagers in Minneapolis. AAPS 28 ("Dr. Paul Gunderson testified to the virtual non-existence of abortion to the Asian-Pacific population."). Abortion is far from "non-existent" among Asian-Pacifics. In fact, abortion is quite common in Asia. *See* Jones, Forrest, Goldman, Henshaw, Lincoln, Rosoff, Westoff & Wulf, *Teenage Pregnancy in Industrialized Countries* 253, 255 (1986) (Japan has much higher abortion rate than United States). The AAPS brief suggests that it is "implausible that the notice law would selectively impact Asian-Pacifics more than other races in Minnesota." AAPS 28. However, it is not at all implausible that an Asian teenager, part of a culture which strongly values family ties and family honor, would be disgraced by being compelled to reveal her pregnancy to her parents or a court. In fact, the much higher percentage of total births to Asian-Pacific teenagers in Minneapolis, as compared with the percentage of births to Asian-Pacific teenagers in the United States as a whole, suggests that subdivision 6 did cause an increase in births among these teenagers. *See* AAPS 41a-42a.

Second, AAPS claims that there is no evidence that more minors carried unwanted pregnancies to term because the number of births to [illegible]rs for the entire state fell while subdivision 6 was in effect. AAPS 15. [illegible]ntention ignores the fact that the fall in the total number of births pri[illegible] reflects a decrease in the number of births to *married* minors. *See* Exhibit [illegible] *infra* at A-6 (number of births to minors out of wedlock remained su[illegible]ntially the same from 1981-88).

3. Defendants claim that subdivision 6 caused a "substantial increase in parental notification," B.R. 11, and that the district court's finding to the contrary is clearly erroneous.[16] But the district court found that:

> [S]everal witnesses who testified at trial were involved in providing abortions to minors both before and after the enactment of Minn. Stat. § 144.343(2)-(7). These witnesses could have testified as to a change in the level of parental participation occurring at about the time of the statute's effective date. Although these and other witnesses testified that a sizable proportion of minors seeking an abortion in Minnesota voluntarily notify at least one parent of their intention, *none testified that this proportion changed at or around the effective date of the Minnesota parental notification law.*

41a (emphasis added). Defendants cite testimony which they claim compares notification rates before and after 1981, when subdivision 6 went into effect. But the district court did not so interpret this testimony; indeed, no witness was asked to compare the level of notification before and after the enforcement date of the statute. The differences in notification rates referred to by defendants occurred in widely-spaced portions of lengthy testimony, and the district court could reasonably have concluded that these lay estimates did not form a proper basis for a conclusion contrary to the overwhelming weight of the evidence. Defendants' attempt to piece together testimony from several witnesses and divergent portions of testimony[17] does not

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16 As the Court of Appeals noted, "the state did not offer any evidence concerning the effects of this notification." 83a n.9. Moreover, the Court of Appeals did not hold that the district court's finding was clearly erroneous, but merely "observe[d]" that "the percentage of parents notified of their daughters' intended abortion has increased." *Id.* As we have stated in our first brief, this observation is incorrect. *See* B.P. 21 n.46.

17 Defendants rely, for example, on Laura Hunter's testimony in support of their argument that notice increased after the statute went into effect. The following colloquy provides a sufficient basis for the court's conclusion that Hunter's testimony is insufficient support for this assertion:

undercut—and certainly does not render clearly erroneous—the district court's unequivocal finding that the statute did not effect a change in the level of parental notification.[18]

THE COURT: My question is do you have an opinion as to whether or not the statute resulted in some folks, minors talking to their parents who would not have talked to them absent the statute?

THE WITNESS: I wasn't working in the field before the statute existed.

Hunter Tr. 836. The defendants have pointed to isolated and ambiguous statements which they allege indicate an increase in communication. While the statute may have encouraged notification by some minors, it also discouraged notification by others. 31a. This offset is recognized by Hunter in answer to a general question regarding the statute's effects:

> Q. In your years of experience, in your opinion have you seen any effect that the statute requiring either notification of parents or going to court has accomplished in terms of achieving either better, in the family, communications or better quality in the decisionmaking process of the minor women?
>
> A. I would say to families where it has contributed to a better quality in her decisionmaking process, *that existed in those families where the communication was good to begin with* it was the family could share problems and stresses of daily life together to being [sic] with . . . . But in all the other cases where the families were either not that great a bunch dealing with adolescents or where there was [sic] some problems in the family, I don't think it did anything. It could have made it worse.

Hunter Tr. 834-35 (emphasis added). In light of this testimony, it is not surprising that the district court could not conclude that Hunter believed that the state's interest in increasing notification had been furthered by the law.

Defendants' citation to pages 789-90 of the transcript is not conclusive. There, Hunter states that "[p]robably 30% or so, a third" of minors indicate that they have told both their parents about their abortion by the time of the initial telephone counseling. Hunter Tr. 788-89. She then testifies that about 50% of minors use the bypass. Hunter Tr. 790. The change from 30% notification rate at the time of telephone counseling to an implied 50% by the time of the abortion is not a comparison between the pre-enforcement and post-enforcement rates as defendants assert. B.R. 13 n.13. Rather, it likely reflects the increasing, though voluntary, inclination of minors to consult with parents as the date of the procedure draws near.

18 Furthermore, even if the statute may have resulted in benefits for a few teenagers (e.g., a fall in pregnancy rates for teenagers—an argument raised only by *amicus* AAPS and never advanced by the state—or some increase in parental notification) such benefits for a few cannot be bought at the price of the harm this statute has imposed on the vast majority of teenagers seeking abortions in Minnesota. As Justice Stevens wrote in *Carey*:

> Although the State may properly perform a teaching function, it seems to me that an attempt to persuade by inflicting harm on the listener is an unacceptable means of conveying a message that is otherwise legitimate . . . . Assuming that the State could impose a uniform sanction upon young persons who risk self-inflicted harm . . . by engaging in sexual activity, surely that sanction could not take the form of deliberately . . . infecting the promiscuous child.

431 U.S. at 715-16 (Stevens, J., concurring in part and concurring in the judgment). Where, as here, a method of achieving a state purpose directly and deliberately harms those the state seeks to protect, the law amounts to "indiscriminate[ ] and . . . random" imposition of harm violative of the due process clause. *Id.* at 716.

II. THE SOLICITOR GENERAL'S SUGGESTION THAT THIS COURT OVERRULE *ROE V. WADE* IS INAPPROPRIATE.

The Solicitor General, in defiance of principles of *stare decisis*,[19] urges this Court to sustain Minnesota's law on the ground that this Court's precedents in the area of privacy rights were "wrongly decided." S.G. 12. The Solicitor's argument that *Roe v. Wade* should be overturned in this case is not shared by the defendants, who specifically state that they do not seek the overturn of *Roe*. B.R. 28 n.23. Because no party has requested re-examination of *Roe*, this Court should decline to address that question in this case. *See Thornburgh*, 476 U.S. at 828 (O'Connor, J., dissenting); *Akron*, 462 U.S. at 452 (O'Connor, J., dissenting).

In fact, this case can be decided without addressing the issue of abortion. A criminal statute requiring that both biological parents be notified about a medical decision of a very private

19 This Court has consistently held that, even in constitutional cases, "any departure from *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). Even an "overriding conviction" of prior error is not sufficient to justify overruling a case. Monaghan, *Stare Decisis and Constitutional Adjudication*, 88 Colum. L. Rev. 723, 758 (1988). *See* Brief of Senators Bob Packwood, *et al.*, as *Amici Curiae* in Support of Appellees, *Turnock v. Ragsdale*, No. 88-790, at 9 n.20.

nature is a severe intrusion by the state into family life. By forcing two unrelated adults to communicate with each other against their will about sensitive and private information, the Minnesota statute implicates rights beyond the minor's abortion choice. When, for example, a new unitary family has been created—of mother, stepfather, and daughter—and all three agree on medical treatment for the daughter, forcing the mother to communicate with the biological father, who may never have lived with or seen the daughter, and who may have impregnated the mother by rape,[20] violates the informational privacy rights and associational rights of both the minor and her mother. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977), *quoted in United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 109 S. Ct. 1468, 1476 (1989); *see also* J.A. 50; B.C-R. 32 n.63 (discussing burden on associational rights of single parents).[21]

Further, the Solicitor's sweeping assault on this Court's analysis in *Roe* would, if adopted, unravel not only privacy rights but also this Court's time-honored method of constitutional interpretation. As this Court has long held, the principle of "liberty" encompasses more than "mere[ ] freedom from bodily restraint . . . ." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also Griswold v. Connecticut*, 381 U.S. 479, 484-86 (1965). In the decades following *Meyer*, this Court has continued to affirm that "liberty" includes the right to be free of governmental intrusion in matters of purely personal concern. *See Whalen*, 429 U.S. at 599-600 (the right of privacy is composed of both an "individual interest in avoiding disclosure of personal matters" and an "interest in independence in making certain kinds of general decisions."); *Stanley v. Georgia*, 394 U.S. 557, 564-65 (1969). The Solicitor argues, however, that this Court should turn its back on over sixty years of settled decisions and rule that no fundamental right to reproductive privacy, and few fundamental rights in general, exist. S.G. 12.

20 Just last Term in *Michael H. v. Gerald D.*, 109 S. Ct. 2333 (1989), this Court rejected an analysis for determining liberty interests "in isolation from its effect upon other people," posing as a hypothetical a father who had begotten his daughter by rape. *Id.* at 2342 n.4.

21 The judicial bypass option does not alleviate this notice burden. *See* B.P. 36-38. For example, plaintiff Jackie H. was forced to go to court with her daughter and reveal, in front of her daughter, details of her ex-husband's physical abuse. J.A. 320. Her choice between revealing this information both to a judge and to her daughter, and revealing her daughter's pregnancy to an abusive ex-husband, was no choice at all.

The Solicitor urges this Court to replace its painstaking analysis of which liberty interests should be deemed "fundamental" with a restrictive historical approach.[22] Under the Solicitor's

22 The Solicitor's fallback argument is that abortion is different from the other interests protected by this Court's privacy decisions, because the state has an interest in protecting potential life throughout pregnancy. S.G. 13. This contention ignores the reality that no clear line exists between contraceptives and abortion because some contraceptives act after fertilization but prior to implantation. *See* Brief of 274 Organizations in Support of *Roe v. Wade*, *Turnock v. Ragsdale*, No. 88-790, and *Ohio v. Akron Center for Reproductive Health*, 88-805, at 8-9. Moreover, the Solicitor's argument confuses fundamental rights with limited state interests. In *Roe*, the Supreme Court found a compelling but limited state interest in potential life after viability, because it recognized that a woman's own life and health must be the state's paramount concern. 410 U.S. at 165. Viability marks the hypothetical point in pregnancy when the fetus, *if* independent, would have a chance of survival. It is this point at which, *if* it were outside of the womb, someone or something other than the mother could provide the necessities, like oxygen, to support the fetus. *See* Law, *Rethinking Sex and the Constitution*, 132 U. Pa. L. Rev. 955, 1023 (1984); Tribe, *American Constitutional Law* 1357 (2d Ed. 1988); *cf. Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3075 n.9 (Blackmun, J., concurring in part and dissenting in part). This is, however, only a hypothetical, *see id.* at 3066 n.* (Scalia, J., concurring in part and concurring in the judgment), and so long as the fetus is still inside the woman's body, it is completely dependent on her for its survival. To recognize a state interest in the fetus from the moment of conception would strip the woman of her personhood, making her rights subordinate to those of the fetus. *See* Gallagher, *Prenatal Invasions & Intervention: What's Wrong With Fetal Rights*, 10 Harv. Women's L.J. 9 (1987); Johnsen, *The Creation of Fetal Rights: Conflicts With Women's Constitutional Rights to Liberty, Privacy, and Equal Protection*, 95 Yale L.J. 599 (1986); *cf. In Re A.C.*, 533 A.2d 611 (D.C. 1987), *vacated & reh'g en banc granted*, 539 A.2d 203 (D.C. 1988).

Furthermore, determining that the fetus's "right" to life begins at the moment of conception violates the First Amendment's Establishment Clause. Allowing states to arbitrarily choose the point of conception as the time at which the fetus's interest outweighs the woman's right imposes a particular religious doctrine upon all women. *Cf. Webster*, 109 S.Ct. at 3082 (Stevens, J., concurring in part and dissenting in part) ("I am persuaded that the

theory, because statutes limiting abortion were common when the Fourteenth Amendment was ratified, the abortion decision must be denied constitutional protection.[23] S.G. 13. In *Roe*, however, this Court undertook an extensive historical analysis and concluded that no long-standing tradition of laws proscribing abortion existed. 410 U.S. at 129-41 (1973); *cf. id.* at 171 (Rehnquist, J., dissenting) ("The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship.").[24] The history elucidated by this Court in *Roe* has not changed since 1973.[25]

absence of any secular purpose for the legislative declarations that life begins at conception and that conception occurs at fertilization makes the relevant portion of the preamble invalid under the Establishment Clause.").

23 The Solicitor General's arguments would also defeat the fundamental right to privacy recognized in *Griswold*. Although the first specifically anti-contraception statute was enacted in 1873, Comstock Act, ch. 258 § 1, 17 Stat. 598 (1873), anti-obscenity statutes had been used earlier to prosecute those who disseminated contraceptive information. Reed, *The Birth Control Movement and Amer[illegible]n Society: From Private Vice To Public Virtue* 9 (1983) (in the 1830's, Charles Knowlton was thrice convicted for distributing his pamphlet on birth control, *Fruits of Philosophy*). Further, the Comstock Act itself arose out of the "prevailing orientation of the period towards sexual matters. Contraception, abortion, sterilization, obscenity, vice were blended in the Puritan morality and unequivocally condemned." Dienes, C. Thomas, *Law, Politics, and Birth Control* 33 (1972).

24 Moreover, the Court noted that many of the 19th century anti-abortion laws were designed to protect women from the dangers of primitive medical techniques, not to harm them. *Id.* at 148-49.

25 This Court has held that even if historical analysis does not provide any explicit constitutional or statutory protection of a fundamental liberty interest, such an analysis must at least exclude a tradition of laws *denying* that interest. *Michael H.*, 109 S. Ct. at 2341 n.2. No such tradition exists with regard to abortion, which was permitted at the time of the Framers and at common law. *Roe v. Wade*, 410 U.S. at 140-41; Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*, at 3-19 (1978). One *amicus* brief in this case purports to demonstrate that, contrary to this Court's position in *Roe*, abortion was criminal at common law and therefore part of a tradition that denied the existence of a liberty interest in abortion. *See* Brief *Amicus Curiae* of the American Academy of Medical Ethics in Support of Appellants in *Turnock*, No. 88-790, and Cross-Petitioners in *Hodgson*, 88-1309. A careful reading of this brief, however, reveals that its

Even if this Court were to reject its prior decision to look at the whole of our history, the state of the law in 1868 cannot be determinative of fundamental rights.[26] *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 669 (1966) ("In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights."); *cf. Michael H.*, 109 S. Ct. at 2350 (Brennan, J., dissenting) ("Just as the common-law notions no longer define the property that the Constitution protects . . . neither do they circumscribe the liberty that it guarantees."). The Nation's understanding of which interests are "implicit in the concept of ordered liberty" has evolved. *See Palko v. Connecticut*, 302 U.S. 319, 326 (1937). This evolution is illustrated by present-day condemnation of the major reasons for the adoption of anti-abortion laws

author is unable to cite even one early English common law case in which either a woman or an "abortionist" was criminally prosecuted for a successful, voluntary termination of pregnancy. Rather, the cases cited involved assaults that resulted in injury or death of a pregnant woman and her fetus, *see, e.g., R. v. Lichefeld*, K.B. 27/974, Rex m.4 (1505) (defendant charged as accessory to suicide, a felony killing), or the killing of a child born alive, which then, as now, was considered murder, *see, e.g., R. v. de Bourton*, Y.B. Mich. 1 Edw. 3, f.23, pl. 28 (1327) (man who violently beat a woman pregnant with twins indicted for death of twin who was born alive and then died, but not charged in death of unborn twin). These cases do nothing to substantiate the claim that abortion was criminal at common law. In the vain effort to identify a common law tradition of criminalization of abortion, the brief's author is reduced to unconvincing analogies involving the common law's increasing concern with the status of young children. *Id.* at 11-17. For a more thorough description of the origins and nature of abortion regulation in this country, *see* Brief of 281 American Historians as *Amici Curiae* Supporting Appellees, *Webster v. Reproductive Health Services*, No. 88-605.

26 The Solicitor's use of the mid-19th century as the point of reference for determining whether abortion is a right seems arbitrary at best, because he argues in another case pending before this Court that the historical sources to which one must refer include the Framers' understanding of the limits of "liberty," rather than solely the understanding of the 14th Amendment's ratifiers. Brief of the Solicitor General as *Amicus Curiae* Supporting Respondents, *Cruzan v. Director of Missouri Dep't of Health*, No. 88-1503, at 12. The Solicitor's decision not to refer to 1791 as the point of reference is unsurprising, given this Court's previous finding that abortion was not illegal at the time of the Framers. 410 U.S. at 129, 140-41. *See also* n.25 *supra*.

in the 1800's (i.e., nativist fears, the movement to consolidate control over the medical profession, and fears about rising status of women) as obsolete or illegitimate. Mohr, *supra* n.25, at 37, 166-170. To choose 1868 as the sole touchstone by which rights are validated is to state that many of our most unassailable rights are not truly "fundamental" at all.[27] "[N]either liberty nor justice would exist," *Palko*, 302 U.S. at 326, if the power over such a fundamental conscience-based decision as whether to bear a child was transferred from the individual to the government.[28]

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27 " 'Liberty' and 'property' are broad and majestic terms. They are among the '[g]reat [constitutional] concepts . . . purposely left to gather meaning from experience . . . . [T]hey relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.' " *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 571 (1972) (quoting *Nat'l Insurance Co. of the District of Columbia v. Tidewater Transfer Co.*, 337 U.S. 582, 646-47 (1949) (Frankfurter, J., dissenting)).

28 Indeed, if the Solicitor's argument is accepted, the following would not be constitutionally protected: the right to be free from racial segregation, *Brown v. Bd. of Education*, 347 U.S. 483 (1954), overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896); the right to marry a person of another race, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to live with a person of another race, *McLaughlin v. Florida*, 379 U.S. 184 (1964), overruling *Pace v. Alabama*, 106 U.S. 583 (1883); the right to be free from forced sterilization, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); the right of married persons to use contraceptives, *Griswold; the right of unmarried persons to use contraceptives, Eisenstadt v. Baird*, 405 U.S. 438 (1972); the right to travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969); the right to counsel, *Gideon v. Wainwright*, 372 U.S. 335 (1963), overruling *Betts v. Brady*, 316 U.S. 455 (1942); the right of women to vote, *Minor v. Happerset*, 88 U.S. (21 Wall.) 162 (1875), overruled by U.S. Const. Amend. XIX; the right of women to practice law, *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873) (holding that women may be excluded from the practice of law); the right of women to serve on juries, *Taylor v. Louisiana*, 419 U.S. 522 (1975), overruling (in effect) *Hoyt v. Florida*, 368 U.S. 57 (1961); the right of poor people to vote, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966), overruling *Breedlove v. Suttles*, 302 U.S. 277 (1937); the right to raise one's natural but illegitimate children, *Stanley v. Illinois*, 405 U.S. 645 (1972); the right to be free from arbitrary transfers from prisons to psychiatric institutions, *Vitek v. Jones*, 445 U.S. 480 (1980). This list illustrates the hazards of relying exclusively on what the 50 states historically have recognized and legislated in determining the scope of "liberty."

III. COMMON LAW PRINCIPLES DEFINING MINORS' LEGAL RIGHTS WERE NEVER AS RESTRICTIVE AS THIS STATUTE AND CANNOT BE RESURRECTED TO SUSTAIN IT.

Both defendants and the Solicitor rely on history and what the latter calls its "single, powerful voice" to support the parental interests allegedly reflected in the statute. S.G. 17. Having argued that fundamental constitutional rights are generally limited by history, the Solicitor goes on to argue that in the case of minors, history supports the constitutionality of a two-parent notification requirement (with no exceptions or bypass). S.G. 19-20. However, no historical analysis can support the features of subdivision 6 that set it apart from other statutes: namely, its requirement that *both* biological parents be notified and that even emancipated minors be, in effect, subject to its requirements.[29]

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29 *See* B.C-R. 25-27. Defendants admit in a footnote that Minnesota has "no general statutory definition of the term 'emancipation.' " B.R. 2 n.2. However, they argue that two Minnesota statutes, which permit minors living apart from their parents and managing their own affairs and minors who have been married or who have borne a child to consent to all health care, somehow define emancipation. B.R. 2 n.2. But these statutes were enacted 10 years before Minn. Stat. § 144.343(2)-(7), are not recognized as exceptions to subdivisions 2 and 6, and do not define emancipation in Minnesota. Moreover, case law in Minnesota decided after the date these statutes were passed does not mention Minn. Stat. § 144.341 or § 144.342 as the statutory definition of emancipation. *See, e.g., Streitz v. Streitz*, 363 N.W.2d 135 (Minn. Ct. App. 1985). Indeed, Suzanne Smith, supervisor of the Guardian *Ad Litem* Program in Hennepin County, the county used by the majority of minors for court bypass, testified as follows:

> The statute has language that refers to an emancipated minor which leads to many problems that there is such a thing as an emancipated minor. All of the attorneys and judges that have been working with us tell us in Minnesota juvenile court there is no such thing.
>
> . . . .
>
> Q If a minor is living on her own, married and has a child, you don't go through this and say you can go home now, you are not required to go to court under the statute, or do you take it to a judge?
>
> A We would take it to the court. Many of the questions we get from the clinics describe these kinds of situations and since we don't have any guidelines they go to court, so that there aren't any chances taken.

J.A. 230-31.

The common law never required the consent of both biological parents for *any* medical procedure; the consent of a single parent, originally the *father*, was always sufficient.[30] Thus, concerning the possibility that a child's mother might consent to medical treatment, the court in *Browning v. Hoffman*, 90 W. Va. 568, 111 S.E. 492 (1922), wrote "[i]t does not appear that she could have given consent *or obtained authority to do so from her husband.*" *Id.* at 580, 111 S.E. at 497 (emphasis added); *see also* 46 C.J. *Parent and Child* § 103 (1928) ("mother has no right of action at common law where the parents are living together" for injuries to child).[31] Further, the common law rule of parental consent is founded on the presumed incapacity of minors to consent on their own behalf,[32] a reason not proffered by defendants in support of this statute.

Defendants' attempt to characterize notification to both biological parents as a constitutionally-based right of parents flowing from the common-law rule of parental consent thus misconceives both the common law rule (which never required the consent of both parents) and its basis (which was not a parental right, but an inability of the minor to consent for herself). Further, biological parents have no constitutional right to the assistance of the state in fulfilling the parental role or in creating a parental role they never had. *See* B.C-R. 27-32.

30 As the court wrote in finding liability in *Rishworth v. Moss*, 159 S.W. 122 (Tex. Civ. App. 1913), *aff'd*, 222 S.W. 225 (Tex. 1920): "It was not alleged or proved by appellees that appellants [the parents of an 11 year old girl], *or either of them*, had any knowledge of the operation until after the death of the child, or that they, *or either of them*, consented to or authorized the operation." *Id.* at 123 (emphasis added). *See also Zoski v. Gaines*, 271 Mich. 1, 10, 260 N.W. 99, 103 (1935) ("In view of the child's age, the fact that *neither* of his parents were with him at the time of the operation, or came to the hospital with him, . . . we cannot allow consent to be implied in such situations."); *Bellotti II*, 443 U.S. at 648 ("The District Court found it to be 'custom' to perform other medical procedures on minors with the consent of only one parent") (citing *Baird v. Bellotti*, 393 F. Supp. 847, 852 (D. Mass. 1975)).

31 The rule requiring the consent of the father or parent for the physician to avoid tort liability has the same theoretical basis as the old common law rule prohibiting a married woman from suing for personal injury (including the technical assault involved in medical treatment for herself) unless her husband joins in the suit. *See* 30 C.J. *Husband and Wife* § 685 (1923); *see also Thompson v. Thompson*, 218 U.S. 611, 614-15 (1910) (expounding doctrine that "[a]t the common law the husband and wife were regarded as one," but noting that recent statutes have "enabled [a married woman] to protect the security of her person against the wrongs and assaults of others."). Yet even as early as 1908, the general rule requiring "the consent of the husband or father to the performance of an operation upon a married woman or child" was in doubt. 30 Cyclopedia of Law and Procedure, *Physicians and Surgeons* 1577 (1908).

32 The underlying rationale for the common law requirement of parental consent before a physician could treat a minor stems from the truism that unconsented medical treatment represents a tort against the person of the patient. *See, e.g., Rishworth*, 159 S.W. at 124; *see also Bonner v. Moran*, 126 F.2d 121, 122 (D.C. Cir. 1941). Since minors are incompetent to consent to a tort, "the consent of the parent is necessary for an operation on a child." *Id.*

The common law presumption of the incapacity of minors to consent to medical treatment has been abrogated by statute for mature minors in many states (*see* B.C-R. Exhibit F), and for all minors seeking specific types of health care in most states (*see* B.P. Exhibits C and D). Further, the common law rule has itself been modified to permit emergency or life-saving treatment of minors without parental consent or even in the face of parental refusal to consent. *See* cases cited in B.P. 42 nn. 82-83.

CONCLUSION

Petitioners respectfully request this Court to reverse the judgment of the Eighth Circuit Court of Appeals that Minn. Stat. § 144.343(6) is constitutional.

Respectfully submitted,

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APPENDIX

Exhibit A

Percentage of Pregnancies Ending in Abortion in Minnesota, 1975-87*

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
10-17 yr. olds:													
No. of abortions:	1507	2060	2274	2186	2308	2327	1820	1564	1432	1395	1570	1545	1648
No. of pregnancies:	3958	4391	4573	4271	4364	4315	3714	3307	2987	3031	3122	3133	3249
% of pregnancies ending in abortion:	38.1%	46.9%	49.7%	51.2%	52.9%	53.9%	49.0%	47.3%	47.9%	46.0%	50.3%	49.3%	50.7%

(*chart continued on next page*)

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* Numbers of pregnancies and abortions for 1975 to 1986 are taken from the Brief of AAPS as *amicus curiae* at 11a (Table 1). Numbers for 1987 are taken from *Minnesota Health Statistics: 1987*, published by the Minnesota Department of Health at 72 (Table 34). A copy of *Minnesota Health Statistics: 1987* has been lodged with the Clerk for the convenience of the Court by Counsel for Petitioners.

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
18-19 yr. olds:													
No. of abortions:	1758	2511	2693	3054	3293	3380	3064	2799	2547	2586	2531	2372	2306
No. of pregnancies:	6494	7017	7347	7738	8057	8301	7697	7052	6223	6112	5958	5493	5596
% of pregnancies ending in abortion:	27.1%	35.8%	36.7%	39.5%	40.9%	40.7%	39.8%	39.7%	40.9%	42.3%	42.5%	43.2%	41.2%
20-24 yr. olds:													
No. of abortions:	2702	3643	4528	5066	5683	6054	6047	5963	5487	6032	6067	5724	5576
No. of pregnancies:	22001	22431	24524	25058	26747	28093	27820	27256	24943	25032	24585	22792	21634
% of pregnancies ending in abortion:	12.3%	16.2%	18.5%	20.2%	21.2%	21.5%	21.7%	21.9%	22.0%	24.1%	24.7%	25.1%	25.8%

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	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
25-54 yr. olds:													
No. of abortions:	2161	2895	3529	3872	4355	4716	4881	5180	5012	5525	5812	6035	6183
No. of pregnancies:	31145	32837	36282	37849	40423	42198	43804	45003	44581	46748	48250	48544	50797
% of pregnancies ending in abortion:	6.9%	8.8%	9.7%	10.2%	10.8%	11.2%	11.1%	11.5%	11.2%	11.8%	12.0%	12.4%	12.2%

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Exhibit B

Relative Risk of Second Trimester Abortions†

Total Number of Abortions

Age Group*	Year											
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
10-17	1507	2060	2274	2186	2308	2327	1820	1564	1432	1395	1570	1545
18-19	1758	2511	2693	3054	3293	3380	3064	2799	2547	2586	2531	2372
20-24	2702	3649	4528	5066	5683	6054	6047	5963	5487	6032	6067	5724
25 +	2161	2895	3529	3872	4355	4716	4881	5180	5012	5525	5812	6035

Number of Abortions Performed After 12 Weeks Gestational Age

Age Group	Year											
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
10-17	270	470	474	403	432	510	365	322	334	360	361	333
18-19	228	426	464	449	460	562	462	425	419	489	441	435
20-24	275	446	512	505	591	681	625	631	626	786	723	668
25 +	189	306	368	302	327	403	363	412	370	461	458	516

† This Exhibit uses raw data provided by the Minnesota Department of Health as reproduced in the Brief of AAPS as *amicus curiae* at 23a-24a (Table 3).

* Definition of symbols: "<" = ages less than; "+" = and ages above; "x/y" = formula for calculating ratio.

Percentage of Abortions Performed After 12 Weeks Gestational Age

Age Group	Year											
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
<18	17.9	22.8	20.8	18.4	18.7	21.9	20.1	20.6	23.3	25.8	23.0	21.6
18-19	13.0	17.0	17.2	14.7	14.0	16.6	15.1	15.2	16.5	18.9	17.4	18.3
20-24	10.2	12.2	11.3	10.0	10.4	11.2	10.3	10.6	11.4	13.0	11.9	11.7
25 +	8.7	10.6	10.4	7.8	7.5	8.5	7.4	8.0	7.4	8.3	7.9	8.6
18 +	10.5	13.0	12.5	10.5	10.3	11.6	10.4	10.5	10.8	12.3	11.3	11.5

Ratio of Percentages of Minors and Adults

Age Group	Year											
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
<18/ 18 +	1.71	1.75	1.67	1.76	1.81	1.88	1.94	1.96	2.15	2.10	2.04	1.88

Exhibit C

Births to Minors by Marital Status*

Minnesota	1980	1981	1982	1983	1984	1985	1986	1987
Births < 18 (Total)	2033	1929	1778	1574	1654	1573	1626	1588
Percent Change in Births to Minors (Total), 1980-1986:				-20%				
Out of Wedlock Births < 18	1438	1396	1364	1243	1339	1335	1427	1390
Percent Change in Out of Wedlock Births, 1980-1986:				-0.7%				
Births to Married Minors	595	533	414	331	315	238	199	198
Percent Change in Births to Married Minors, 1980-1986:				-66.5%				

* Source: Table entitled, "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1987," provided by the Minnesota Department of Health, November 1, 1989 (This table gives the numbers of births; the percentages were calculated).